

If maintenance agreements are sold separately from tangible personal property, the sale of the agreement is not a taxable transaction. However, when maintenance services or parts are provided under the maintenance agreement, the company providing the maintenance or repair will be acting as a service provider under the Service Occupation Tax Act. See 86 Ill. Adm. Code 140.101. (This is a GIL).

December 21, 1999

Dear Xxxxx:

This letter is in response to your letter dated October 22, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I am writing to request a sales/use tax determination under the laws of your state for a service our company will be offering our customers in the future. Enclosed is a copy of the service to which I am referring.

From your state we already have a sales/use tax determination on the COMPANY mattress system (the COMPANY mattress system is a piece of durable medical equipment that consists of a mattress and a power unit) that this service agreement would relate to.

Please answer the following questions:

- 1) Is the purchase of this service subject to tax always?
- 2) If the answer to 1) is no, is an institution exempt from tax if it has a certificate of exemption?
- 3) If the answer to 1) is no, would an individual be exempt from tax if they have a prescription or under what circumstances?

Please send me your determination as soon as possible. Thank you.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

The taxability of maintenance agreements is dependent upon whether the charge for the agreement is included in the selling price of tangible personal property. If the charge for a maintenance agreement is included in the selling price of tangible personal property, that charge is part of the gross receipts of the retail transaction and is subject to Retailers' Occupation Tax liability. No tax is incurred on the maintenance services or parts when the repair or servicing is completed.

If maintenance agreements are sold separately from tangible personal property, the sale of the agreement is not a taxable transaction. However, when maintenance services or parts are provided under the maintenance agreement, the company providing the maintenance or repair will be acting as a service provider under the Service Occupation Tax Act. See 86 Ill. Adm. Code 140.101, enclosed. The Service Occupation Tax Act provides that when a service provider enters into an agreement to provide maintenance services for a particular piece of equipment for a stated period of time at a predetermined fee, the service provider incurs Use Tax based upon its cost price of tangible personal property transferred to the customer incident to the completion of the maintenance service. See 86 Ill. Adm. Code 140.301(b)(3), enclosed. This is because the service provider, in these instances, is considered the end user of the tangible personal property.

Currently, such servicemen incur a Use Tax liability on any tangible personal property transferred incident to completion of the maintenance contract, as discussed above, even if those sales are to exempt entities. Sales to exempt entities do not relieve servicemen of their tax liability. Please note that the Department is considering proposing new rules that would allow such servicemen to utilize a "pass through" of the exemption provided to exempt service customers. Until those new rules are proposed and adopted, such servicemen continue to incur a Use Tax liability on any tangible personal property transferred incident to completion of maintenance services, as discussed above, to exempt entities.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

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If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.